

0-023A047

ITEL
Pullman
January 17, 1990

Itel Rail Corporation

55 Francisco Street
San Francisco, CA 94133
(415) 984-4000
(415) 781-1035 Fax

RECORDATION NO. 16198-0

JAN 23 1990 - 2:00 PM

INTERSTATE COMMERCE COMMISSION

Hon. Noreta R. McGee
Secretary
Interstate Commerce Commission
Washington, DC 20423

**Re: Schedule No. 4 to Lease Agreement dated January 16, 1989,
between Itel Rail Corporation and Columbus and Greenville
Railway Company**

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in three (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$15 recordation fee.

Please record this Schedule under the Lease Agreement dated January 16, 1989, between Itel Rail Corporation, successor to Itel Rail Corporation and Itel Railcar Corporation, and Columbus and Greenville Railway Company, which was filed with the ICC on February 8, 1989 under Recordation No. 16198.

The parties to the aforementioned instrument are listed below:

Itel Rail Corporation (Lessors)
55 Francisco Street
San Francisco, California 94133

Columbus and Greenville Railway Company (Lessee)
201 19th Street North
P.O. Box 6000
Columbus, Mississippi 39703

This Schedule adds to the Lease Agreement sixty (60) 4750 cubic foot, 100-ton, Plate C, LO covered hoppers bearing reporting marks CAGY 300-359.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

Patricia Schumacker

Patricia Schumacker
Legal Assistant

SCHEDULE NO. 4

16198-D
JAN 23 1990 12:01 PM

THIS SCHEDULE No. 4 ("Schedule") to that certain ~~LEASE~~ ^{INTERSTATE COMMERCE COMMISSION} Agreement, (the "Agreement") made as of January 16, 1989, between ITEL RAIL CORPORATION, as successor in interest to Itel Rail Corporation and Itel Railcar Corporation, ("Lessor"), and COLUMBUS AND GREENVILLE RAILWAY COMPANY ("Lessee") is made this 4th day of January, 1990.

Lessor and Lessee agree as follows:

1. All capitalized terms defined in the Agreement shall have the meanings defined therein when used in this Schedule No. 4, except that the term "Cars" as used herein shall only refer to the equipment described in this Schedule unless otherwise indicated.
2. Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Agreement and this Schedule:

AAR Mech Desig.	Description	Numbers	Dimensions Inside		No. of Cars
			Length	Width	
LO	4750 c.f., 100-ton, 100-ton, Plate C Covered Hoppers	CAGY <u>300</u> <u>359</u>	54'1"	10'	60

3. The term of the Agreement with respect to each Car described in this Schedule shall commence at 12 noon on the date such Car is remarked ("Delivery") and shall continue as to all of the Cars described in this Schedule for one (1) year from the earlier of (i) the date on which the last Car described in this Schedule was remarked or (ii) sixty (60) days from the date the first Car described in this Schedule was remarked. Upon the remark of the final Car. Lessor shall notify Lessee in writing of the expiration date of the Term in the form of Exhibit A hereto. Unless Lessee, within fifteen (15) days of the date of such notice, demonstrates to the satisfaction of Lessor that such date is incorrect, then Lessee shall be deemed to have concurred to such date.
4. When a Car has been remarked, it shall be moved to Lessee's railroad line

at no initial cost to Lessee at the earliest time that is consistent with the mutual convenience and economy of the parties. Lessee agrees to pay the rent set forth in the Agreement, for any of the Cars, notwithstanding the fact that Lessee may not have immediate physical possession of the Cars leased hereunder.

5.
 - A. Lessee shall perform the registration and record keeping required for the Cars described in this Schedule, as described in Section 3 of the Agreement. Lessee shall register each Car in UMLER placing the letters designated by Lessor in owner's field in such a manner that Lessor, or its agent, is allowed access to any required information including but not limited to Train 62 Junction Advices and the Train 65, 67, 71 and 80 Advices with regard to each Car. If Lessee fails to register or improperly registers any Car in UMLER, Lessee shall be responsible for an amount equal to the revenues that would have been earned by such Car had it been properly registered in UMLER.
 - B. Lessee shall submit to Lessor a monthly report in complete AAR format for all sums due to Lessee from Lessor for such calendar month with respect to the maintenance of the Cars, including sums due for maintenance performed by third parties and for maintenance performed by Lessee. Lessor shall pay to Lessee all sums due pursuant to this Subsection within thirty (30) days after receipt of such monthly maintenance report and bill.
6. Lessor shall perform or cause to be performed and shall pay all costs and expenses associated with the maintenance of the Cars described in this Schedule, except those delegated to Lessee in Subsection 5.B. of the Agreement. With respect to the Cars listed in this Schedule, Exhibit B attached hereto is hereby added to the Agreement. Subsection 5.A. of the Agreement shall not apply with respect to such Cars.
7. Lessor agrees to reimburse Lessee, within thirty (30) days of Lessor's receipt of the receipted copy of the paid tax bill, for all taxes actually paid in cash by Lessee resulting from: 1) ad valorem tax assessments on the Cars; and 2) any assessment, levy or impost relating to any Car, the Agreement, or the delivery of the Cars, which remained unpaid as of the date of the delivery of the Cars to Lessee or which is assessed, levied or imposed during the term of the Agreement, except taxes on income or gross receipts imposed on Lessee or sales or use tax imposed on mileage charges, car hire revenue, or the proceeds of the sale or lease of the Cars. Lessor and Lessee will comply with all state and local laws requiring filing of ad valorem returns associated with the Cars. Notwithstanding any portion of this Section, Lessor shall not be responsible for penalty or interest assessments resulting from Lessee's failure to comply with any regulation or statute of any taxing or assessing authority. Lessee shall forward to Lessor upon receipt all correspondence, notifications of proposed tax assessments and tax bills associated with any tax reimbursable by Lessor. Lessor may, in good faith and by appropriate proceedings, contest any assessment, notification of assessment

or tax bill. Lessor shall assume full responsibility for all expenses, including legal fees, resulting from such contest.

8. Rent

A. Definitions

- (i) "Eligible Lines" is defined as the
as of the date this Schedule is
executed by the parties. Unless Lessor and Lessee agree
otherwise, any lines purchased by Lessee or added to the
Eligible Lines or any Eligible Lines sold by Lessee to
another party during the Term, effective on the date of
such sale, are deemed to be the lines of another railroad
company (a foreign road) for the purposes of determining
Revenues (as defined in Subsection 8.A.(iii) hereinbelow).
- (ii) "Revenue Rates" is defined as the
specified for each Car in the Hourly and
Mileage Car Hire Rate Table published in the October 1989
edition of The Official Railway Equipment Register, as may
be updated from time to time.
- (iii) "Per Diem Revenues" is defined as the
calculated at the Revenue Rates, that are earned
or due for the use and handling of the Cars on all railroad
lines other than the Eligible Lines, including, but not
limited to, per diem, whether or not collected and received
by Lessor, and undiminished by any claimed abatement,
reduction or offset caused by any action or failure of
Lessee.
- (iv) "Mileage Revenues" is defined as the
calculated at the Revenue Rates, that are earned or
due for the use and handling of the Cars on all railroad
lines other than the Eligible Lines, including, but not
limited to, mileage, whether or not collected and received
by Lessor, and undiminished by any claimed abatement,
reduction or offset caused by any action or failure of
Lessee.
- (v) "Revenues" is defined as the sum of
- (vi) The "Base Revenues" is defined as the
which the Cars would have earned in the aggregate if the
Cars had been on railroad lines other than Eligible Lines
for of the hours that such Cars
were subject to the Agreement for any calendar quarter or
applicable portion thereof during the Term.

- (vii) The fixed rent ("Fixed Rent") shall be
per Car per month for each full calendar
month ("Month") during the Term. The Fixed Rent for any
Car which is not subject to the Agreement for an entire
Month shall be prorated at
per day for such Car during such Month. The Fixed
Rent shall be due and payable regardless of any claimed
abatement, reduction or offset, except as otherwise
provided herein.
- (viii) "Initial Lading" of a Car shall be the earlier to occur
of either: 1) the such Car shall have been loaded
off Lessee's railroad line with the first load of freight;
or 2) the day after such Car is first
received on Lessee's lines.
- B. Lessor shall receive all Revenues earned by each Car prior to its
Initial Loading. Each Car delivered pursuant to Section 3 of the
Schedule shall become subject to the rental calculation under
Subsection 8.C. hereinbelow upon the Initial Loading of such Car;
provided, however, that Lessor shall retain and be entitled to all
Revenues earned by all the Cars, including any Revenues due Lessee
pursuant to Subsection 8.C.(iii) ("Lessee's Revenue Share"), until
the total amount of Lessee's Revenue Share retained by Lessor shall
have become equal to Lessor's expenses for remarking and delivering
the Cars, pursuant to Section 3, to Lessee ("Delivery Expense").
- C. Lessee agrees to pay rent to Lessor for the Cars calculated as
follows:
- (i) Lessee shall pay to Lessor the Fixed Rent on the last day
of each month during the Term.
 - (ii) In the event Per Diem Revenues earned in any calendar
quarter or applicable portion thereof are equal to or less
than the Base Revenues, Lessor shall retain a sum equal
to one hundred percent (100%) of the Per Diem Revenues.
 - (iii) In the event Per Diem Revenues earned in any calendar
quarter or applicable portion thereof exceed the Base
Revenues, Lessor shall retain an amount equal to the Base
Revenues and Lessee, subject to Subsection 8.B., shall
receive one hundred percent (100%) of all Per Diem Revenues
received in excess of the Base Revenues.
 - (iv) Lessor shall receive an amount equal to one hundred percent
(100%) of all Mileage Revenues.
- D. (i) In the event that as a result of any action or inaction
by Lessee, Lessor shall receive or earn for the use of

any Cars, Revenues calculated at hourly or mileage car hire rates that are lower in amount than those specified in Subsection 8.A. (ii), Lessee shall pay to Lessor, within ten (10) days of Lessor's request, an amount equal to the difference between the Revenues such Cars would have earned at the Revenue Rates and the amount of revenues actually received or earned for such Cars.

(ii) Should any abatement, reduction or offset occur as a result of any action or inaction of Lessee, Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor the amount of such abatement, reduction or offset.

(iii) If, at any time during the Agreement, Lessee operates lines other than the Eligible Lines, Lessee shall supply Lessor with records which distinguish the movement of each Car on the Eligible Lines from the movement of such Car on any other lines operated by Lessee.

E. Any agreement between Lessee and any other party with respect to the Cars ("Third Party Agreement(s)") shall be null and void without Lessor's prior written approval if such Third Party Agreement affects the revenues earned by the Cars.

F. The calculations required in Section 8 shall be made within five (5) months of the end of each calendar year ("Final Calculations"). Lessee shall pay to Lessor by the sixtieth (60th) day after the end of each Service Month (as hereinafter defined), eighty percent (80%) of the total Revenues for that Service Month. For the purposes hereof, "Service Month" shall be defined as the calendar month in which Revenues were actually earned. At the time payment of eighty percent (80%) of the total Revenues is made to Lessor, Lessee shall report to Lessor for the same month the hours earned, miles traveled and dollar figure for one hundred percent (100%) of the Revenues. Ten percent (10%) of the Revenues shall be remitted to Lessor within ninety (90) days after the end of each Service Month and the remaining ten percent (10%) of the total Revenues shall be remitted to Lessor within one hundred twenty (120) days after the end of each Service Month. Lessor shall within three (3) months of the end of each calendar quarter, calculate on a quarterly year-to-date basis, the approximate amount, if any, due either party pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculations, provided, however, that within twenty (20) days following the Final Calculations, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.

G. If, with respect to any calendar quarter, Revenues received by Lessor for the Cars in the aggregate while they were on railroad lines other than the Eligible Lines when added to the Fixed Rent are less than
per car

(the "Minimum Amount") Lessor may, at any time, at its option and upon not less than fifteen (15) days prior written notice to Lessee, terminate this Agreement as to such cars as Lessor shall determine.

- H. If any Car has remained on Lessee's property because Lessee has not given preference to the Car as specified in Subsection 2.B. of the Agreement, Lessee shall be liable for and remit to Lessor an amount equal to the revenues which would have been generated if such Car had been in the physical possession and use of a railroad for the entire period during which such Car is on Lessee's property due to such failure, with each Car traveling _____ miles per day.
9. A. Lessee agrees to defend, indemnify and hold Lessor harmless from any and all claims, losses, damages, liabilities, costs, and expenses (including attorney's fees) with respect to, caused by, or arising out of the Cars which are occasioned by the fault of Lessee, occur while the Cars are in Lessee's possession or control, or would be the "handling carrier's" responsibility under the Interchange Rules, as if the Cars were not bearing Lessee's reporting marks.
- B. Except as provided in Subsection 9.A. above, and except for those claims, losses, damages, liabilities and expenses for which Lessee shall be responsible as set forth in this Agreement, Lessor shall indemnify and hold Lessee harmless from any and all loss, damage or destruction of or to the Cars, ordinary wear and tear excepted.
- C. The indemnities and assumptions of liability contained in this Agreement shall survive the expiration or termination of the Agreement.
10. Upon the expiration or termination of the Agreement with respect to the Car(s) described in this Schedule, if some or all of the Cars are to be delivered to Lessor at Lessee's railroad tracks, Lessee shall be responsible for any transportation costs incurred in moving such Cars to said tracks subsequent to the time of expiration of this Agreement as to the Cars. Lessee shall, at Lessor's option, provide up to _____ days' free storage on its railroad tracks for any Car which is either on Lessee's railroad tracks at expiration or is subsequently returned to Lessee's railroad tracks. Said _____ days shall run either from expiration or from the date such Car is returned to Lessee's railroad line subsequent to expiration, whichever date is later. If requested to do so by Lessor, Lessee shall, at Lessor's option, either move a remarked Car to an interchange point on Lessee's lines selected by Lessor or use its best efforts to load the remarked Car with freight and deliver it to a connecting carrier for shipment.
11. Except as expressly modified by this or any other Schedule, all terms and provisions of the Agreement shall remain in full force and effect with respect to all Cars subject to the Agreement.

12. This Schedule may be executed by the parties hereto in any number of counterparts, and all counterparts taken together shall be deemed to constitute one instrument.

ITEL RAIL CORPORATION

By: 

Title: Sr. Vice President-Marketing

Date: 1/4/90

COLUMBUS AND GREENVILLE RAILWAY COMPANY

By: 

Title: President

Date: 12-21-89

EXHIBIT A

CERTIFICATE OF DELIVERY DATE

Exhibit A to Schedule No. 4 dated as of _____ by and between ITEL RAIL CORPORATION ("Lessor") and COLUMBUS AND GREENVILLE RAILWAY COMPANY ("Lessee"), to Lease Agreement dated as of January 16, 1989, by and between Lessor and Itel Rail Corporation, severally, as lessors, and Lessee.

CAR REPORTING
MARKS AND NUMBER

DELIVERY DATE

The last day of the Term for the above referenced Cars shall be

_____.

ITEL RAIL CORPORATION

By: _____

Title: _____

Date: _____

EXHIBIT B

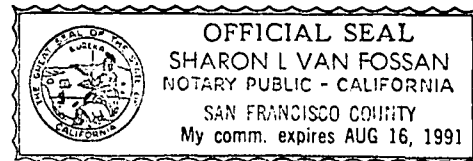
Running Repairs: Covered Hoppers

Angle Cocks	Wheels
Air Hose	Yokes
Train Line	Knuckles/Pins
Operating Levers and Brackets	Slack Adjuster
Sill Steps	Couplers
Grab Irons	Draft Gears
Brake Shoes	Coupler Carriers
Brake Shoe Keys	Center Plate Repair (Not Replacement of Center Plate)
Brake Connecting Pin	Cotter Keys
Brake Head Wear Plates	Roller Bearing Adapters
Air Brakes	Outlet Gate Repair (Not Gate Replacement)
Hand Brakes	
Brake Beams and Levers	Hatch Cover Repair (Not Replacement of Hatch Cover)
Truck Springs	

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this 4th day of January, 1990, before me personally appeared Enrique Manasco, to me personally known, who being by me duly sworn says that such person is Sr. Vice President Marketing of ITEL Rail Corporation, that the foregoing Schedule No. 4 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan
Notary Public



STATE OF Mississippi)
) ss:
COUNTY OF Lauderdale)

On this 21st day of December, 1989, before me personally appeared Boyer D. Bell, to me personally known, who being by me duly sworn says that such person is President of Columbus and Greenville Railway Company that the foregoing Schedule No. 4 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Shelia M. Carr
Notary Public

MY COMMISSION EXPIRES
9-10-93